

REMARKS

This Paper is submitted in response to the final Office Action dated November 2, 2006 having a shortened statutory response period ending on February 2, 2007. This Paper is filed within two months of the Office Action mail date, namely January 2, 2007. The Commissioner is hereby authorized to charge any fees to Deposit Account number 02-1818.

Claims 1-40 are currently pending in this application. Claims 41-66 have been canceled as a result of a restriction requirement. Claims 13-17 and 38-40 have been amended to correct a minor grammatical infirmity. These amendments neither narrow the claim scope nor add new matter. Applicants respectfully request that this Paper be entered as it 1) places the claims in a condition for allowance, and 2) requires only a cursory review by the Examiner.

Claims 1-6 and 12-17 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent Application Publication No. 2002/0115795 to Shang et al. (*Shang*). Claims 7-8 were rejected under 35 U.S.C. §103(a) for allegedly being obvious over *Shang* in view of U.S. Patent No. 5,397,842 to Hamilton (*Hamilton*). Claims 9-11 were rejected under 35 U.S.C. §103(a) as being obvious over *Shang* in view of U.S. Patent No. 6,346,308 to Cahill et al. (*Cahill*). Applicants respectfully disagree with and traverse these rejections for the reasons set forth below.

Applicants respectfully reiterate that *Shang* teaches away from a film having a cross-link free polymer blend as recited in the present claims. *Shang* discloses a film having a crosslinked component. *Shang*, ¶ 24. The fact that *Shang* discloses a crosslinked component is undisputed as the Examiner has admitted the same. See Office Action dated November 2, 2006 at ¶ 2.

What is disputed is the reading of *Shang*. It is a well-settled axiom of patent law that a reference must be viewed as a whole for what it reasonably discloses. *In re Wright*, 6 USPQ2d 1959 (Fed. Cir. 1988). The Examiner contends *Shang's* blend has regions that are not cross-linked, *Shang* thereby disclosing a cross-link free blend. Office Action dated November 2, 2006 at ¶ 6. It is respectfully submitted that the Examiner's contention stands in direct contrast to the bedrock principle of reading a reference as a whole. Undisputed is the fact that *Shang requires* a crosslinked component. The required element of *Shang's* film (*i.e.*, the crosslinked component) is the element the present claims expressly lack (*i.e.*, a cross-link free polymer blend). The contention that some parts of *Shang's* film may not be crosslinked is immaterial to 1) the undisputed fact *Shang* requires a crosslinked component and 2) the present claims explicitly lack

this required element. Accordingly, *Shang* constitutes a *prima facie* teaching away reference. In particular, a skilled artisan reading *Shang*'s disclosure of a blend which requires a crosslinked component would be led in a path divergent from the claimed crosslink-free polymer blend. See *Monarch Knitting Machinery Corp. v. Fukuhara Industrial Trading Co., Ltd.*, 139 F.3d 1009 (Fed. Cir. 1998), quoting *In re Gurley*, 27 F.3d 551 (Fed. Cir. 1994). Thus, *Shang*'s blend which requires a cross-linked component teaches away from the claimed cross-link free polymeric blend. Teaching away is a *per se* demonstration of non-obviousness. *In re Dow Chemical Co.*, 837 F.2d 469 (Fed. Cir. 1988). Consequently, any alleged rejection combining *Hamilton* and/or *Cahill* with *Shang* is also nonobvious.

Assuming *arguendo*, that *Hamilton* and/or *Cahill* are combinable with *Shang* (which they are not as *Shang* teaches away from the present claims), *Hamilton* fails to fulfill the deficiencies of *Shang*. *Hamilton* discloses a polymer blend composed of 1) a polyolefin and 2) a segmented copolymer. *Hamilton*, col. 3 lines 33-62. *Hamilton*'s segmented copolymer includes a non-polar polyolefin and a vinyl aromatic monomer. *Id.* Consequently, *Hamilton* fails to disclose or suggest an ethylene-based or ionomer first component (claim 1) or an ethylene α -olefin copolymer (claim 19) as recited in the present claims. Moreover, the *Hamilton* blend may be crosslinked, further teaching away from the present claims. *Hamilton*, col. 3 lines 60-63, col. 5 lines 61-68.

Cahill also fails to fulfill the deficiencies of *Shang*. *Cahill* discloses an oxygen barrier composition that may be used with polyolefin-based packaging. *Cahill*, col. 5 lines 30-40. *Cahill*, however, has no disclosure regarding a cross-link free polymer blend with an ethylene-based first component present in an amount of 1-60% by weight of the blend and a propylene based second component present in an amount of 40-99% by weight of the blend as recited in the present claims. *Cahill* therefore fails to disclose or suggest the claimed subject matter.

CONCLUSION

In view of the foregoing remarks, Applicants submit that claims 1-40 are in a condition for allowance and respectfully request a notice of the same.

Respectfully submitted,

BELL, BOYD & LLOYD LLC

BY 

Ted J. Barthel

Reg. No. 48,769

Customer No. 29200

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